United States Circuit Court, District of Iowa.

PAYSON, ASSIGNEE, *v.* DIETZ.

The Circuit Court of the United States has jurisdiction of a common-law or equity action brought by an assignee in bankruptcy appointed in another district where such assignee is a citizen of another state, and the defendant is a citizen of the state where the action is brought and the amount in dispute exceeds the sum of $500.

Jurisdiction of the state and federal courts as affected by the Bankruptcy Act considered.

THE petition alleged that the plaintiff "Joseph R. Payson, assignee in bankruptcy of the Republic Insurance Company of Chicago, Illinois, is a *citizen of the state of Illinois, and that the defendant is a citizen of the state of Iowa.*"

The petition then proceeded to set out a case to recover of the defendant the sum of $600, the amount of an unpaid assessment upon stock held by him in the Republic Insurance Company. Among other averments was one that this company, by reason of losses in the Chicago fire, was unable to meet its debts and liabilities except by an assessment upon its stockholders; that the said company had been adjudged a bankrupt by the proper District Court in Illinois; and that the said court, after notice to the stockholders, ordered the assignee to make upon them a call and assessment for the whole amount due and unpaid upon their stock.

Defendant moved to dismiss the petition for want of jurisdiction.

H. B. Allen, Galusha Parsons and *C. H. Gatch*, for the motion.

H. Scott Howell, Austin Adams, John N. Rogers and *Joseph G. Anderson*, against the motion.

DILLON, Circuit Judge.—Since the amount in dispute exceeds five hundred dollars, and the plaintiff is a citizen of Illinois, and the defendant a citizen of Iowa, the jurisdiction of this court under the 11th section of the Judiciary Act plainly exists, unless it be taken away by the provisions of the Bankrupt Act. It is admitted that there is no express provision depriving either this court or the state courts of jurisdiction of actions in behalf of assignees in bankruptcy. It is argued, however, that the jurisdiction of each of these classes of courts is taken away as a necessary or implied effect of the jurisdiction which is conferred by the

Bankrupt Act upon the District Courts of the United States as courts of bankruptcy. It is claimed, and we are inclined to think correctly, that the District Courts of the United States have jurisdiction by reason of the subject-matter of all proceedings in bankruptcy, and over all actions by assignees in bankruptcy even though such actions be not brought in the District Court where the proceedings in bankruptcy are pending; and that since Congress has thus established bankruptcy courts throughout the United States and given them this full and plenary jurisdiction, and since the 2d section of the Bankrupt Act prescribes that the Circuit Courts may exercise certain specific powers and jurisdiction in bankruptcy proceedings and actions, the conclusion, it is insisted, is a necessary or legitimate one, that it was the intention of Congress that all jurisdiction in bankruptcy cases should be exclusively in the bankruptcy courts, except so far as the Bankrupt Act expressly confers such jurisdiction upon the Circuit Court.

We have felt the force of the argument made to support the exclusive jurisdiction of the District Courts in all actions relating to the collection of the assets of the estate and in all other actions concerning the estate, except so far as a concurrent jurisdiction is vested in a limited class of cases by the 2d section in the Circuit Courts; but upon the best consideration we have been able to give to this view, we have not been able to reach the conclusion that it is sound.

We mention briefly some of the reasons which sustain the jurisdiction of the Circuit Courts in actions of this character.

1. This court, where the jurisdiction arising from citizenship exists, is a court of full common-law and equity powers. In this action the requisite citizenship does exist, and the cause of action is not one created by the Bankrupt Act, but is essentially a common-law action to enforce a contract against the defendant. It is true that the assignee claims title under proceedings in bankruptcy, much like an executor under proceedings in the Probate Court, but this does not make the action, properly viewed, a proceeding in bankruptcy. With the consent and under the direction of the proper bankruptcy court, there is no reason why an action like this should not be enforced either in the state court, or in this court, as may be deemed most expedient. Essentially it does not

differ from actions of which both classes of courts constantly take cognisance as part of their original and rightful jurisdiction.

2. The argument against the jurisdiction of this court derives all its force from the supposed exclusive jurisdiction of the District Courts, and that such jurisdiction is exclusive, both of the state courts and of this court, except to the limited extent mentioned in the second section of the act.

If Congress had intended by the first section of the act to make the jurisdiction of the District Courts exclusive in the collection of assets, and to deprive all other courts of jurisdiction over any action by or against assignees in bankruptcy, it would have been as easy as it would have been natural to employ language to express this purpose. But it will be observed that the word *exclusive* as descriptive of the jurisdiction, is not only not used, but seems to have been carefully avoided.

3. That the state courts are not deprived of jurisdiction in ordinary common-law and equity suits, simply because brought by the assignee in bankruptcy, is a proposition that has the support of many well-reasoned adjudications made both under the Bankrupt Act of 1841 and the present act: *Wood* v. *Jenkins*, 10 Met. 583; *Stevens* v. *Savings Bank*, 101 Mass. 109, 1869; *Brown* v. *Hall*, 7 Bush (Ky.) 69, 1869; *Winslow* v. *Clark*, 2 Lansing (N. Y.) 377; *Gilbert* v. *Priest*, 7 Albany Law J. 119, and cases cited: *Piper* v. *Harmer*, 5 Bank. Reg. 252; *Mitchell* v. *Great Works, &c.*, 2 Story C. C. 668, per STORY, J.; *In re Central Bank*, 6 Bank. Reg. 207, per BENEDICT, J.; *State* v. *Trustees*, 5 Id. 471; *Carr* v. *Gale*, 3 Woodb. & Minot C. C. 64; *Lucas* v. *Morris*, 1 Paine C. C. 396; 1 Kent Com. 379, 400.

And Mr. Justice CLIFFORD, in the able judgment in which he demonstrated the jurisdiction of the several District Courts of the United States in all matters and cases in bankruptcy expressly admits that "*State* courts may, doubtless, exercise concurrent jurisdiction with the Circuit and District Courts in certain cases growing out of proceedings in bankruptcy:" *Sherman* v. *Bingham*, 7 Bank. Reg. 497. And if these courts may exercise a concurrent jurisdiction in any event, it would seem to be in cases where the assignee with the consent or concurrence of the bankruptcy court resorted to them for the ordinary purpose of collecting the assets of the estate.

Assuming the decisions in favor of the concurrent jurisdiction of the state courts in certain classes of action by assignees in bankruptcy to be correct, it would be an anomalous result and one which

we can hardly suppose Congress intended, viz.: That the state courts should exercise their general concurrent jurisdiction, if the assignee should desire to resort to them, but that this court should not exercise its like jurisdiction.

4. The jurisdiction of this court under the Judiciary Act is plain. Repeals by implication are not favored. Jurisdiction plainly conferred upon one court cannot be taken away by mere affirmative legislation conferring like jurisdiction upon another court. Speaking of this subject an eminent judge holds this language: "There is, I think, no instance in the whole history of the law, where the mere grant of jurisdiction to a particular court, without any words of exclusion, has been held to oust any other court of the powers which it before possessed:" BRONSON, J., *Delafield* v. *The State of Illinois*, 2 Hill 159.

For these reasons the motion is denied.

LOVE, J., concurred.

Supreme Court of New Jersey.

THE STATE AND OTHERS *v.* PRITCHARD AND OTHERS.

Conviction of an infamous crime does not *ipso facto* work such a forfeiture of public office as to make the office vacant.

The right to remove a state officer for misbehavior in office does not appertain to the executive.

Such act is judicial and belongs to the Court of Impeachments.

Certain police commissioners of Jersey City, appointed by statute, having been convicted upon indictment of conspiracy to cheat the city and the governor having declared their offices to be thereby vacated, and having appointed their successors, held that such executive action was illegal and void.

CERTAIN members of the Board of Police Commissioners of Jersey City having been convicted in a criminal court of a conspiracy to defraud the city by means of their office, the governor declared and adjudged the offices of such convicts to be vacant; and, accordingly, appointed their successors.

The commissioners being advised by their counsel[1] that the

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[1] The following is the opinion of City-Attorney LEWIS, which is now sustained by the court:—

Jersey City, N. J., July 18th 1872.

To the Board of Police Commissioners of Jersey City:—

Gentlemen:—Pursuant to a resolution passed by your board July 13th inst., referring the opinion of the Attorney-General of the state,